

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION OF CARDINAL UTILITIES, INC.;	)	
LARRAINE P. KIMBRELL; AND STEVE POPE	)	
	)	
	)	CASE NO.
	)	90-189
ALLEGED VIOLATIONS OF KRS CHAPTER 278	)	

IN RE:

CARDINAL UTILITIES, INC.  
PETITION OF NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET

O R D E R

On July 9, 1990, the Commission issued a show cause Order against Cardinal Utilities, Inc. ("Cardinal"), Lorraine P. Kimbrell, and Steve Pope. Cardinal, which owns six sewage treatment plants in western Kentucky, was incorporated by Lorraine Kimbrell in 1985, with Ms. Kimbrell acquiring ownership of 300 of the 500 shares of stock issued and outstanding. Steve Pope, the son of Lorraine Kimbrell, acquired ownership of 100 shares of stock, and has been the person primarily responsible for the daily operation of Cardinal's six sewage treatment plants since 1985. The remaining 100 shares were acquired by Jan Brandstettler.

The Commission's show cause Order alleged the following: (1) that Lorraine Kimbrell transferred all outstanding shares of Cardinal stock to Steve Pope without obtaining Commission approval, in violation of KRS 278.020(4)(5); (2) that Cardinal charged rates for sewer service to Southern Pride Truck Stop,

("Southern Pride") which had not been approved by the Commission or filed in Cardinal's tariff as required by KRS 278.160; and (3) that, based on the Utility Inspection Report issued by Commission Staff on May 25, 1990, which reported over 50 instances of plant maintenance and operation which were not in conformity with good engineering practices, Cardinal was in violation of 807 KAR 5:071, Section 7.

The show cause Order directed Steve Pope and Lorraine Kimbrell to appear at a hearing and to be prepared to show cause why they should not be penalized pursuant to KRS 278.990 for violation of the above-cited statutes and regulations, and why Cardinal should not be required to refund all unauthorized rates for sewage service collected from Southern Pride. Lorraine Kimbrell, Steve Pope, and Cardinal were also directed to submit a written response to the allegations contained in the show cause Order within 20 days.

On August 13, 1990, a petition was filed with the Commission by the Natural Resources and Environmental Protection Cabinet ("Cabinet"). The petition requested the Commission to find Cardinal in default of the regulations and requirements of the Commission and the water quality statutes and regulations administered by the Cabinet. The petition further requested the Commission to make demand upon Irrevocable Letter of Credit No. 162, attached to the petition as an exhibit, which was issued by Peoples First National Bank and Trust Company of Paducah, Kentucky, on January 20, 1986, in favor of the Commission. The Cabinet's petition requested the Commission to deposit the funds

obtained through the irrevocable letter of credit with the Franklin Circuit Court Clerk in Civil Action No. 89-CI-046, on behalf of the Cabinet, so that the funds may be used for the repair and maintenance of Cardinal's sewage treatment plants. By Order of August 15, 1990, the Commission found that the Cabinet's petition involved questions of law and fact in common with the Commission's show cause proceeding against Cardinal, and ordered that the two proceedings be consolidated. That Order also directed that Steve Pope and Larraine Kimbrell should, in addition to the matters addressed in the Commission's show cause Order, be prepared at the hearing to show cause: (1) why the transfer of the stock of Cardinal from Larraine Kimbrell to Steve Pope should not be declared void and invalid for failure to obtain prior Commission approval as required by KRS 278.020; and (2) why the Commission should not make demand upon Irrevocable Letter of Credit No. 162 for default by Cardinal of the terms of said letter of credit.

Neither Steve Pope, Larraine Kimbrell, nor any representative of Cardinal appeared at the hearing held at the Commission on September 12, 1990, nor was the Commission advised of their inability to appear. No request was made to continue or reschedule the hearing. In addition, neither Steve Pope nor Larraine Kimbrell responded to the directive in the Commission's Order of July 9, 1990 to submit a written response to the allegations of the Order. To date, no defense whatsoever has been offered by Ms. Kimbrell, Mr. Pope, or Cardinal to the allegations in these consolidated proceedings.

At the hearing held on September 12, 1990, Commission Staff and representatives of the Cabinet presented witnesses and introduced documentary evidence in support of their allegations. This Order will address the allegations separately.

**FAILURE ON THE PART OF CARDINAL TO MAINTAIN  
ITS SEWER UTILITIES IN ACCORDANCE WITH  
COMMISSION AND CABINET REGULATIONS**

Testimony at the hearing related only to the allegation of failure on the part of Cardinal to maintain its sewer utilities in accordance with Commission and Cabinet regulations.

The Cabinet presented Joseph C. Deavers, an Environmental Engineer employed in its Paducah Regional Office. Mr. Deavers testified that his main duty is to act as an inspector and enforcement officer with respect to wastewater facilities. In the course of his regular job duties, he has inspected the six facilities owned by Cardinal for compliance with Cabinet regulations on either a regular or intermittent basis since 1981.<sup>1</sup> He last inspected the facilities on September 6, 1990, with follow-up inspections of most of the plants on September 10, 1990. The reports issued pursuant to those inspections, as well as earlier inspection reports, were entered into the record as Cabinet Exhibits 3 through 15.

Mr. Deavers testified that each of the plants has a permit issued by the Cabinet which sets out parameters for the content of the effluent discharged. He agreed to provide the Commission with

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<sup>1</sup> Transcript of Evidence ("T.E."), pages 9-11.

a copy of these Kentucky Pollutant Discharge Elimination System ("KPDES") permits subsequent to the hearing. Those documents were filed with the Commission on October 17, 1990 and made a part of the record herein.

The Commission presented Larry N. Updike as its witness. Mr. Updike is employed by the Commission as a Utility Regulatory and Safety Inspector, whose duties include the inspection of wastewater treatment plants to ensure compliance with Commission rules and regulations. Mr. Updike testified that in the course of his duties as a utility investigator, he inspected the six sewage treatment plants owned by Cardinal. Mr. Updike inspected the six Cardinal sewage treatment plants on May 15, 1990, and issued a report on May 25, 1990 citing the violations occurring in each of the six facilities.<sup>2</sup> That report was entered into the record as Commission Staff Exhibit 1. During Mr. Updike's September 6, 1990 inspection, he also videotaped areas of the six plants. That videotape was shown at the hearing in its entirety and was entered into the record as Commission Staff Exhibit 2.

Mr. Deavers' and Mr. Updike's testimony with respect to each treatment plant is summarized below.

#### Fieldmont Sewage Treatment Plant

Mr. Deavers testified that the Fieldmont plant was cited in a Cabinet inspection report in July of 1987 (Cabinet Exhibit 3). At that time, violations of KRS Chapter 224 and Cabinet regulations

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<sup>2</sup> T.E., pages 53-60.

401 KAR 5:031 and 401 KAR 5:065 were noted, in that Fieldmont had violated its permit limits for ammonia, BOD, suspended solids, and fecal coliform. Subsequent inspections of the facility revealed no significant change in its operation. Mr. Deavers' testimony and the Wastewater Treatment Plant Reports issued pursuant to his inspections of September 6 and 9, 1990 (Cabinet Exhibits 4 and 5) revealed the presence of dissolved oxygen, ammonia nitrogen, and fecal coliform in amounts which were significantly out of line with permit levels.<sup>3</sup>

When questioned about comments noted on his inspection report of September 6, 1990 (Cabinet Exhibit 4), Mr. Deavers further described the following conditions at the plant: buckets of waste improperly disposed of; unclear water in the settling tanks; a low "mixed liquid suspended solids," causing ineffective treatment of sewage; and grayish-black effluent which could be smelled quite a distance from the plant. Mr. Deavers testified that effluent is supposed to be clear when it leaves a sewage treatment plant. Mr. Deavers also testified that Fieldmont was using an ineffective method to chlorinate the effluent.<sup>4</sup>

Mr. Updike's testimony and a review of Commission Staff Exhibit 1 indicate that as of May of 1990, the Fieldmont plant was in violation of Commission Regulation 807 KAR 5:071, Section 7, in

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<sup>3</sup> T.E., pages 13-19.

<sup>4</sup> T.E., pages 33-38.

at least eight instances. Mr. Updike testified that his inspection of September 6, 1990 revealed no improvement of any kind in the Fieldmont plant.<sup>5</sup>

In addition to the deficiencies cited in his May 1990 inspection report, Mr. Updike's videotape and accompanying testimony revealed the following conditions at the plant on September 6, 1990: sludge deposits not properly disposed of; the fence in need of repair; a mud tank which was septic and full of sludge; and the lack of necessary pumps.<sup>6</sup>

#### Gateway Sewage Treatment Plant

Mr. Deavers testified that the Gateway plant was cited by the Cabinet in October of 1987. At that time, violations of KRS Chapter 224 and Cabinet regulations 401 KAR 5:015, :031, :035, and :065 were noted (Cabinet Exhibit 6). Specific violations included an overflowing lift station, a thick buildup in the clarifier, and gray effluent discharging to a creek. He has inspected the plant periodically since that date and has noticed no significant change in its operation. Lab results from the September 1990 samplings revealed that the plant was outside of permit limits with regard to dissolved oxygen, ammonia nitrogen, and fecal coliform. (Cabinet Exhibits 7 and 8.) Mr. Deavers also testified that during both recent inspections he observed raw sewage bypassing a lift station and entering a stream.<sup>7</sup>

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<sup>5</sup> T.E., page 61.

<sup>6</sup> T.E., pages 79-82.

<sup>7</sup> T.E., pages 19-21.

When questioned about comments noted on his inspection report of September 6, 1990 (Cabinet Exhibit 7), Mr. Deavers further described the following conditions at the plant: a dirty bar screen, causing an overflow into the aeration basin; a non-functioning sludge return line, causing a sludge buildup in the clarifier; an ineffective method of chlorination; and muddy-brown effluent. Mr. Deavers stated that the condition of the Gateway plant indicated to him that either daily inspections were not being conducted, or that proper maintenance was not carried out pursuant to the inspections.<sup>8</sup>

Mr. Updike's May 1990 inspection report cites the Gateway plant for 10 violations of Commission Regulation 807 KAR 5:071, Section 7. In addition to the deficiencies cited in that report, Mr. Updike's videotape and accompanying testimony revealed the following conditions at the plant on September 6, 1990: a non-functioning comminutor; an ineffective method of chlorination; scum on top of the chlorine contact tank; an inaccessibility to the lift station due to growth of weeds; sludge on the surface of the clarifier; and raw sewage flowing from the lift station.<sup>9</sup>

#### Green Acres Sewage Treatment Plant

Mr. Deavers testified that the Green Acres plant was cited by the Cabinet in November of 1987. At that time, violations of KRS Chapter 224 and Cabinet regulation 401 KAR 5:065 were noted.

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<sup>8</sup> T.E., page 27 and pages 39-43.

<sup>9</sup> T.E., pages 86-92.



(Cabinet Exhibit 9.) That violation resulted from BOD and ammonia nitrogen in excess of permit limits. Mr. Deavers described the condition of the Green Acres plant, which he has inspected periodically over the years, as "deplorable." He testified that he does not believe that it has worked in the nine years he has inspected it. According to Mr. Deavers, the plant is poorly designed and puts out a grayish effluent that runs across adjoining property and turns black in the stream for several hundred yards downstream.<sup>10</sup> According to the reports issued pursuant to his inspections of September 1990, (Cabinet Exhibits 10 and 11) the effluent was outside permit levels in most, if not all, categories tested.

When questioned about comments noted on his inspection report of September 6, 1990 (Cabinet Exhibit 10), Mr. Deavers further described the following conditions at the plant: clogged, and thus malfunctioning, tertiary filters, resulting from high suspended solids; unsatisfactory self-monitoring program; an ineffective method of chlorination; and thick gray effluent which can be smelled quite a distance from the plant.<sup>11</sup>

Mr. Updike's May 1990 inspection report cites the Green Acres plant for 15 violations of Commission Regulation 807 KAR 5:071, Section 7. In addition to the deficiencies cited in that report, Mr. Updike's videotape and accompanying testimony revealed the following conditions at the plant on September 6, 1990: sludge

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<sup>10</sup> T.E., pages 21-23.

<sup>11</sup> T.E., page 27 and pages 43-47

deposits in the sand filters; septic water in the tertiary unit; lack of a comminutor; improperly disposed of sludge deposits; and sludge on the surface of the clarifier.<sup>12</sup>

Holifield Heights Sewage Treatment Plant

Mr. Deavers testified that the Holifield Heights plant was cited by the Cabinet in March of 1989 for violations of Cabinet regulations. On that report, Mr. Deavers noted that the required Discharge Monitoring Reports for Holifield Heights had not been filed with the Cabinet since June of 1988. (Cabinet Exhibit 14.) Of the samples taken during his September 1990 inspections, the dissolved oxygen, ammonia nitrogen, and fecal coliform tested outside permit limits. (Cabinet Exhibits 12 and 13.) Mr. Deavers also noted during those inspections that the main power switch leading into the treatment plant was turned off, causing the plant to be septic. Mr. Deavers testified that Mr. Pope had not reported this malfunction of the plant, or any malfunction of any of the six plants, to the Paducah Regional Office of the Cabinet, in violation of a court order issued in the action pending in Franklin Circuit Court.<sup>13</sup>

When questioned about comments noted on his inspection report of September 6, 1990 (Cabinet Exhibit 12), Mr. Deavers further described the following conditions at the plant: settling tanks covered with algae, indicating that the plant had not been operating for as long as seven days; non-functioning filters and

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<sup>12</sup> T.E., pages 76-79.

<sup>13</sup> T.E., pages 23-26.

aeration tanks; and high fecal coliform, indicating that pathogenic organisms in the water are not being destroyed.<sup>14</sup>

Mr. Updike's May 1990 inspection report cites the Holifield Heights plant for 7 violations of Commission Regulation 807 KAR 5:071, Section 7. In addition to the deficiencies cited in his May 1990 inspection report, Mr. Updike's videotape and accompanying testimony indicated the following conditions at the plant on September 6, 1990: the color of the lagoon was gray to black, indicating that it was on the verge of being septic; green algae growth on the clarifier and clear well; and improperly disposed of sludge deposits.<sup>15</sup>

#### Blandville West

Mr. Deavers testified that two of the four samples taken at the Blandville West plant on September 6 tested outside permit limits. Mr. Deavers also testified that Blandville West's effluent was a thick green color, in violation of its permit.<sup>16</sup>

When questioned about comments noted on his inspection report of September 6, 1990 (Cabinet Exhibit 15), Mr. Deavers described an unsatisfactory self-monitoring program and ineffective chlorination of the effluent.<sup>17</sup>

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<sup>14</sup> T.E., pages 47-50.

<sup>15</sup> T.E., pages 90-92.

<sup>16</sup> T.E., pages 26-27.

<sup>17</sup> T.E., page 51.

Mr. Updike's May 1990 inspection report cites the Blandville West plant for 8 violations of Commission Regulation 807 KAR 5:071, Section 7. In addition to the deficiencies cited in that report, Mr. Updike's videotape and accompanying testimony revealed the following conditions at Blandville West on September 6, 1990: a bluish scum on the top of the lagoon; weeds growing around the lagoon and hindering inspection of the lagoon for damage; an abandoned contact tank posing a potential mosquito problem; sludge in the clear well; improper and ineffective chlorination of the effluent; and the lack of a backup blower motor.<sup>18</sup>

#### Golden Acres Treatment Plant

Mr. Deavers testified that the Golden Acres plant was operating at least close to the limits permitted by Cabinet regulations, although the plant did need some maintenance attention.<sup>19</sup>

Mr. Updike's May 1990 inspection report cites the Golden Acres plant for 7 violations of Commission Regulation 807 KAR 5:071, Section 7. In addition to the deficiencies cited in that report, Mr. Updike's videotape and accompanying testimony revealed the following conditions at the Golden Acres plant on September 6, 1990: the fence was falling down, allowing access to the plant by unauthorized persons; need for inspection of the diffuser, which

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<sup>18</sup> T.E., pages 71-76.

<sup>19</sup> T.E., page 27.

appeared to not be operating properly; improper and ineffective chlorination of the effluent; sludge deposits in the clarifier; scum over the surface of the clarifier; lack of water service to the plant; lack of a comminutor; scum on top of the chlorine contact tank; and sludge deposits in the chlorine contact tank<sup>20</sup>

With respect to all six of the treatment plants discussed above, Mr. Deavers testified that, as of September 6, 1990, none of the plants were in compliance with the limits of their KPDES discharge permits. He also testified that none of the plants was operating in compliance with Cabinet regulations or in accordance with accepted engineering practices.<sup>21</sup>

Mr. Updike testified that the conditions he found in the course of his inspections of the six Cardinal plants on May 15 and September 6, 1990 were not in accordance with accepted engineering practice.<sup>22</sup> He also stated that he had conducted an inspection of the six plants in June of 1989 and issued a report on that inspection on June 28, 1989. (Commission Staff Exhibit 3.) The report, which cited all six plants for multiple violations of Commission regulations, was mailed to Steve Pope, who responded that most of the deficiencies would be repaired or corrected. However, most of the conditions cited were not repaired or

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<sup>20</sup> T.E., pages 82-86.

<sup>21</sup> T.E., page 50.

<sup>22</sup> T.E., pages 92-93

corrected and were cited again a year later in Mr. Updike's May 1990 report.<sup>23</sup>

807 KAR 5:071, Section 7(1), provides as follows:

Section 7. Design, Construction, and Operation. (1) General. The sewage treatment facilities of the sewage utility shall be constructed, installed, maintained and operated in accordance with accepted good engineering practice to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that Cardinal has willfully failed to maintain and operate its sewage facilities in accordance with accepted good engineering practice in violation of 807 KAR 5:071, Section 7. Cardinal's violation of 807 KAR 5:071, Section 7, subjects it to the penalties imposed by KRS 278.990. That statute provides in part that if any utility willfully violates any of the provisions of KRS Chapter 278 or any regulations promulgated pursuant thereto, it shall be subject to a civil penalty of not less than \$25 nor more than \$2500 for each offense. The Commission finds that, due to the number of violations, the gravity of the violations, the adverse effect of the violations on public health and safety, and the continuing failure of Cardinal to correct the violations, Cardinal should be assessed a civil penalty in the amount of \$15,000. This amount

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<sup>23</sup> T.E., pages 93-96.

represents a \$2500 penalty per facility for the violations occurring at each.

Attached as Exhibit 6 to the Cabinet's petition filed with the Commission was an order of the Franklin Circuit Court in Case No. 89-CI-0046, dated February 7, 1989. In that order, all parties, including Cardinal, Lorraine Kimbrell, and Steve Pope, agreed that the six sewage treatment facilities operated by Cardinal are discharging inadequately treated wastewater into the waters of the Commonwealth of Kentucky. The parties further agreed that the discharge from the six facilities exceeded their KPDES permit limits, and that there had been no discharge monitoring reports filed for the facilities for the third quarter of 1988. The Court in that order directed Cardinal, Ms. Kimbrell, and Mr. Pope to perform the repair and maintenance necessary to the six facilities to bring the discharge within KPDES permit limits on or before March 2, 1989.

From the court order described above, the Commission finds that Cardinal, Lorraine Kimbrell, and Steve Pope have admitted to violations of KRS Chapter 224 and Cabinet regulations promulgated pursuant thereto. From the testimony and exhibits offered at the hearing in the instant proceeding, the Commission further finds that Cardinal has failed to bring its facilities into compliance with the court order and with Cabinet statutes and regulations, including 401 KAR 5:065, Section 1(1)(a), which by its terms constitutes a violation of KRS Chapter 224; 401 KAR 5:065, Section 1(12)(d); and 401 KAR 5:065, Section 1(5).

The Commission further finds that Cardinal's failure to comply with the above-cited Cabinet statutes and regulations constitutes a failure to maintain and operate its facilities in accordance with good accepted engineering practice in violation of 807 KAR 5:071, Section 7(1).

The Commission further finds a material and continuing default by Cardinal: (a) to provide at all times adequate, safe and sanitary sewage collection, treatment and disposal facilities in accordance with the statutes and regulations of the Commission and the Cabinet; (b) to maintain adequate records of tests relating to the sewage facilities; and (c) to remedy defaults in the sewage facilities and make such adjustments, repairs, installations, or improvements to the sewage facilities reasonably necessary for the operation of the sewage facilities to conform to the lawful and reasonable requirements of the Commission and the Cabinet. The Commission therefore finds Cardinal in default of the terms of Irrevocable Letter of Credit No. 162, issued by Peoples First National Bank and Trust Company on January 20, 1986, in favor of the Commission.

#### UNAUTHORIZED RATES CHARGED TO SOUTHERN PRIDE

The Commission also alleged in its show cause Order that a prima facie case had been established that Cardinal charged rates for sewage service to one customer, Southern Pride, which were never approved by the Commission nor filed in Cardinal's tariff. The evidence entered into the record as proof that Cardinal unlawfully charged these rates consists of the following:



1. Copy of the Commission's final Order in Case No. 9876.<sup>24</sup> This Order established the rates which Cardinal was authorized to charge for sewer service provided on and after September 29, 1987. (Commission Staff Exhibit 5.)

2. Certified copy of Cardinal's filed tariff effective February 28, 1988. The tariff sheets set forth the rates established in the Commission's Order of September 29, 1987 in Case No. 9876. The rate prescribed for commercial customers is a flat rate of \$25.10 per month. (Commission Staff Exhibit 6.)

3. Affidavit of Joe L. Wallace, president of Jiffy Food Mart, Inc. This affidavit describes the rate charged to Jiffy Mart by Cardinal for sewer service to Southern Pride as a monthly minimum charge of \$15.00, plus a charge of \$1.00 for each additional 1,000 gallons. (Commission Staff Exhibit 7.)

4. Affidavit of John L. Geoghegan, Commission Staff member. This affidavit authenticates pages from Cardinal's billing ledgers (which are attached thereto) for amounts billed and collected from Jiffy Food Mart, Inc. d/b/a Southern Pride. (Commission Staff Exhibit 8.)

5. Affidavit of Lee M. MacCracken, Executive Director of the Commission. This affidavit states that a search of Commission records reveals no contract or rate schedule filed by Cardinal with the Commission which sets forth a special or distinct rate for sewer service to Southern Pride. (Commission Staff Exhibit 9.)

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<sup>24</sup> Case No. 9876, Application of Cardinal Utilities, Inc. For a Rate Adjustment Pursuant to the Alternative Rate Filing Procedure For Small Utilities.

6. Transcript of Evidence of Case No. 89-336<sup>25</sup> (pages 63-65). This contains the testimony of Steve Pope regarding Cardinal's billing practices for Southern Pride. (Commission Staff Exhibit 10.)

KRS 278.160 provides as follows:

(1) Under rules prescribed by the commission, each utility shall file with the commission, within such time and in such form as the commission designates, schedules showing all rates and conditions for service established by it and collected or enforced. . . .

(2) No utility shall charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than prescribed in such schedules.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that Cardinal charged and collected rates from Southern Pride in excess of the rates prescribed in its filed tariff and which had not been approved by the Commission, in willful violation of KRS 278.160. Inasmuch as the rates were collected in violation of KRS 278.160, the amount collected in excess of Cardinal's authorized rates must be refunded to Southern Pride.

Cardinal's violation of KRS 278.160 subjects it to the penalties imposed by KRS 278.990. That statute provides in part that if any utility willfully violates any of the provisions of KRS Chapter 278 or any regulation promulgated pursuant thereto, it shall be subject to a civil penalty of not less than \$25 nor more

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<sup>25</sup> Case No. 89-336, The Application of Cardinal Utilities, Inc. for a Rate Adjustment Pursuant to the Alternative Rate Filing Procedure for Small Utilities.

than \$2,500. The Commission finds that Cardinal should be assessed \$2500 for violation of KRS 278.160.

UNAUTHORIZED TRANSFER OF OWNERSHIP OF CARDINAL

The Commission's show cause Order alleged that Lorraine Kimbrell transferred all outstanding shares of Cardinal stock to Steve Pope without the approval of the Commission, in violation of KRS 278.020(4) and (5).

On June 13, 1989, Steve Pope filed an application requesting Commission approval of the transfer to him of all issued and outstanding common stock of Cardinal from Lorraine Kimbrell.<sup>26</sup> By Order dated October 5, 1989, the Commission denied Steve Pope's application, finding that he did not have the financial, technical, and managerial abilities to provide reasonable service to Cardinal's customers. However, Commission Staff entered the following evidence into the record in support of its allegation that the stock transfer had already occurred prior to seeking Commission approval:

1. Transcript of Evidence of Case No. 89-336 (page 10). Steve Pope's admission that he is the sole shareholder in Cardinal. (Commission Staff Exhibit 11.)

2. Transcript of Evidence of Case No. 89-336 (page 59). Steve Pope's testimony that Lorraine Kimbrell transferred her stock in Cardinal to him. (Commission Staff Exhibit 12.)

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<sup>26</sup> Case No. 89-161, The Application of Cardinal Utilities, Inc. for the Transfer of Common Stock to Steve Pope.

3. Transcript of Case No. 89-336 (page 62). Steve Pope's testimony that Lorraine Kimbrell is no longer associated with Cardinal. (Commission Staff Exhibit 13.)

4. Copy of the minutes of the January 4, 1987 meeting of Cardinal's shareholders. These minutes, signed by Steve Pope, reflect that Lorraine Kimbrell and Jan Brandstettler transferred their shares of stock in Cardinal to Mr. Pope. (Commission Staff Exhibit 14.)

5. Copy of the minutes of the December 1, 1988 meeting of Cardinal's shareholders. These minutes, signed by Steve Pope, identify Mr. Pope as the sole shareholder of Cardinal's stock. (Commission Staff Exhibit 15.)

6. Memorandum of Informal Conference on June 1, 1990, held in Case No. 89-336. This memorandum states that at an informal conference held on June 1, 1990, Steve Pope stated that Lorraine Kimbrell had transferred all outstanding shares of Cardinal's stock to him in 1988. (Commission Staff Exhibit 16.)

7. Affidavit of Mark Frost, Commission Staff member. The affidavit discusses comments made by Steve Pope at an informal conference on June 1, 1990, in Case No. 89-336. (Commission Staff Exhibit 17.)

8. Certificate of Cardinal stock issued to Lorraine Kimbrell. This certificate indicates that Ms. Kimbrell transferred and assigned 300 shares of stock to Steve Pope on January 3, 1987. (Commission Staff Exhibit 18.)

9. Certificate of Cardinal stock issued to Jan Brandstettler. This certificate indicates that Ms. Brandstettler

transferred and assigned 100 shares of stock to Steve Pope on January 3, 1987. (Commission Staff Exhibit 19.)

10. Cardinal Utilities, Inc. Stock Transfer Ledger (Share Register). This ledger indicates that a transfer of Cardinal stock was made to Steve Pope by Lorraine Kimbrell (300 shares) and Jan Brandstettler (100 shares) on January 3, 1987. (Commission Staff Exhibit 20.)

KRS 278.020(4) provides in pertinent part as follows:

No person under the jurisdiction of the commission shall acquire or transfer ownership of or control, or the right to control, any utility, by sale of assets, transfer of stock or otherwise. . . without prior approval by the commission.

KRS 278.020(5) prohibits an individual or entity from acquiring control of any utility without having first obtained the approval of the Commission, and states that control shall be presumed to exist if any such individual or entity owns 10 percent or more of the voting securities of the utility. The statute also provides that "Any such acquisition of control without such prior authorization shall be void and of no effect."

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that Lorraine Kimbrell willfully transferred all outstanding shares of Cardinal stock to Steve Pope, and that Steve Pope willfully acquired said stock, without the approval of the Commission, in violation of KRS 278.020(4) and (5).

The violation of KRS 278.020(4) and (5) by Lorraine Kimbrell and Steve Pope subjects them to the penalties imposed by KRS 278.990. That statute provides in part that if any officer,

agent, or employee of a utility willfully violates any of the provisions of KRS Chapter 278, he or she shall be subject to a civil penalty not to exceed \$2500 for each offense. The Commission finds that as officers, agents, and employees of Cardinal, Larraine Kimbrell and Steve Pope should each be subject to a civil penalty in the amount of \$2500 for violation of KRS 278.020(4) and (5).

The Commission further finds that, by acquiring 100 percent of the outstanding stock of Cardinal, Steve Pope satisfies the presumption contained in KRS 278.020(5) that he has acquired control of Cardinal. Pursuant to said statute, the acquisition of control of Cardinal by Steve Pope is void and of no affect inasmuch as it was obtained without prior authorization of the Commission.

IT IS THEREFORE ORDERED that:

1. All violations of 807 KAR 5:071, Section 7, listed in the Utility Inspection Report of May 25, 1990 (Commission Staff Exhibit 1) shall be corrected within 30 days of the date of entry of this Order.

2. Within 60 days of the date of entry of this Order, Cardinal shall pay to the Commission a penalty in the amount of \$15,000 for violations of 807 KAR 5:071, Section 7. This amount represents a \$2500 penalty per facility for the violations occurring at each.

3. Cardinal shall immediately cease and desist charging any rates not authorized in its filed tariff.

4. Within 30 days of the date of entry of this Order, Cardinal shall file with the Commission a report evidencing the total amount charged and collected from Southern Pride for sewer service from September 29, 1987 to the present.

5. Within 30 days of the date of entry of this Order, Cardinal shall refund the amount collected from Southern Pride from September 29, 1987 to the present which is in excess of that authorized in its filed tariff.

6. Proof that the refund has been made to Southern Pride shall be forwarded by Cardinal to the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky, within 10 days of the date of refund. Proof of payment may be demonstrated by copies of cancelled checks or by any other means deemed sufficient by the Commission.

7. Within 60 days of the date of entry of this Order, Cardinal shall pay to the Commission a penalty of \$2500 for charging unauthorized rates to Southern Pride in violation of KRS 278.160.

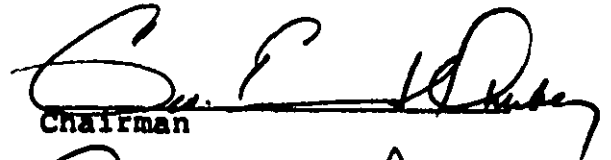
8. Within 60 days of the date of entry of this Order, Larraine Kimbrell and Steve Pope shall each pay to the Commission a penalty of \$2500 for transferring ownership and control of Cardinal without Commission authorization, in violation of KRS 278.020(4) and (5).

9. The transfer of all outstanding stock of Cardinal from Larraine Kimbrell to Steve Pope is hereby declared null and void and of no effect, pursuant to KRS 278.020(5).

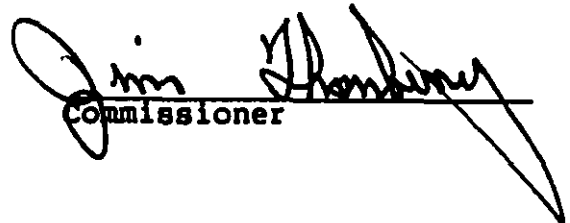
10. Payments of civil penalties to the Commission shall be by certified check or money order made payable to the Kentucky State Treasurer, and shall be mailed to the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky 40601.

Done at Frankfort, Kentucky, this 12th day of November, 1990.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director